

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
C.A. No.**

TIFFANY D. SPENCER,

Plaintiff,

v.

FINANCIAL RECOVERY SERVICES, INC.,
a Minnesota Corp., and DELL FINANCIAL
SERVICES L.L.C., a Delaware LLC,

Defendants.

**NOTICE OF REMOVAL OF
ACTION UNDER 28 U.S.C. § 1441(b)
(FEDERAL QUESTION)**

To the Clerk of the United States District Court for the Eastern District of North Carolina:

PLEASE TAKE NOTICE that Defendant Financial Recovery Services, Inc. ("FRS") hereby removes to this Court the state court action described below.

1. On May 13, 2011, Plaintiff Tiffany D. Spencer ("Plaintiff") commenced an action in the General Court of Justice, District Court Division, District Twelve, County of Cumberland, State of North Carolina, entitled and captioned: *TIFFANY D. SPENCER v. FINANCIAL RECOVERY SERVICES, INC., a Minnesota Corp., and DELL FINANCIAL SERVICES L.L.C., a Delaware LLC*. A copy of the summons and complaint served on FRS is attached and marked as Exhibit "A".

2. This action is a civil action of which this Honorable Court has original jurisdiction under 28 U.S.C. § 1331, and is one which may be removed to this Court by FRS pursuant to 28 U.S.C. § 1441(b) in that it presents a federal question, in that Plaintiff alleges violations of 15 U.S.C. § 1692 *et seq.*, the Fair Debt Collection Practices Act ("FDCPA").

3. The underlying action was served on FRS on May 17, 2011. This removal is timely pursuant to 28 U.S.C. § 1446(b).

4. To the best of the undersigned's knowledge, no other pleadings or documents, other than the documents attached hereto, have been filed in this matter.

5. Defendant Dell Financial Services L.L.C. has consented to the removal of this matter.

6. As required by 28 U.S.C. § 1446(d), FRS will give notice of the filing of this notice to the Plaintiff and to the clerk of the General Court of Justice, District Court Division, District Twelve, County of Cumberland, State of North Carolina, where the action is currently pending.

WHEREFORE, FRS respectfully requests that the above captioned matter currently pending in the Cumberland County, North Carolina District Court be removed to this Court.

This the 16th day of June, 2011.

/s/ Caren D. Enloe
of Morris Manning & Martin, LLP
North Carolina Bar No. 17394
1000 Park Forty Plaza
Suite 350
Durham NC 27713
Telephone: (919)806-2969
Facsimile: (919)806-2969
cenloe@mmmlaw.com
*Counsel for Financial Recovery
Services, Inc.*

North Carolina Bar No. 17394
1000 Park Forty Plaza
Suite 350
Durham NC 27713
Telephone: (919)806-2969
Facsimile: (919)806-2969
cenloe@mmmlaw.com
Counsel for Financial Recovery Services, Inc.

EXHIBIT A

STATE OF NORTH CAROLINA

File No.

11CVD4273

CUMBERLAND County

In The General Court Of Justice
☒ District ☐ Superior Court Division

Name Of Plaintiff

Tiffney D. SPENCER

Address

City, State, Zip

VERSUS

Name Of Defendant(s)

FINANCIAL RECOVERY SERVICES, INC., a Minnesota corporation, and DELL FINANCIAL SERVICES, L.L.C., a Delaware LLC

CIVIL SUMMONS

☐ ALIAS AND PLURIES SUMMONS

G.S. 1A-1, Rules 3, 4

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1

Financial Recovery Services, Inc.
 c/o CT Corporation System, Reg. Agent
 150 Fayetteville Street Box 1011
 Raleigh NC 27601

Name And Address Of Defendant 2

WARNING: Requests for Admissions per NCGS § 1A-1 Rule 36 are served with this Summons and Complaint. Failure to timely deny any request will establish that fact for the duration of the case.

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (if None, Address Of Plaintiff)

Christopher W. Livingston Esq., NC Bar No. 27282
 PO Box 220, White Oak NC 28399
 Phone and fax 910 866 4948, cell 910 876 7001
 Email chrisatty@hotmail.com, usrifecaliber30ml@yahoo.com

Date Issued

Signature

Time

☐ AM ☒ PM

☒ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court

☐ ENDORSEMENT

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement

Signature

Time

☐ AM ☐ PM

☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court

NOTE TO PARTIES: Many counties have **MANDATORY ARBITRATION** programs in which most cases where the amount in controversy is \$15,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

AOC-CV-100, Rev. 10/01

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(Over)

STATE OF NORTH CAROLINA

COUNTY OF CUMBERLAND
DISTRICT TWELVE

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION

FILE NO: 11 CVD 4273

Tiffney D. SPENCER,
Plaintiff

v.

FINANCIAL RECOVERY SERVICES,
INC., a Minnesota corp., and
DELL FINANCIAL SERVICES
L.L.C., a Delaware LLC,
Defendants

CIVIL COMPLAINT

JURY TRIAL DEMANDED

FILED
2011 MAY 13 PM 3:21
CLERK OF COURT
CUMBERLAND COUNTY, N.C.

1. Per 15 U.S.C. § 1692k(d) and a line of U.S. Supreme Court cases, including *Tafflin v. Levitt*, 493 U.S. 455, 458 (1990), this Court has subject matter jurisdiction over claims arising under United States law.

2. Defendants do substantial business in North Carolina under the protection of the laws thereof, including but not limited to consumer debt collection, and both of them have registered agents here, conferring jurisdiction over their persons.

3. Plaintiff Tiffney D. Spencer has the capacity to sue or be sued for her own account or in a representative capacity on behalf of others.

4. Defendant Financial Recovery Services, Inc. (FRS) is a corporation organized under Minnesota law, admitted to do business in North Carolina, SOSID 0698423, principal office

address 4900 Viking Drive, Edina MN 55435, registered agent CT Corporation System, 150 Fayetteville Street Box 1011, Raleigh NC 27601, has the capacity to sue or be sued for its own account or in a representative capacity on behalf of others, holds NCDOI collection agency permit 3917, and is primarily in the business of consumer debt collection.

5. Defendant Dell Financial Services L.L.C. (Dell) is a limited liability company organized under Delaware law, admitted to do business in North Carolina, SOSID 1045745, principal office address One Dell Way, Round Rock TX 78682, registered agent Corporation Service Company, 327 Hillsborough Street, Raleigh NC 27603, has the capacity to sue or be sued for its own account or in a representative capacity on behalf of others, and is primarily in the business of financing Dell computer purchases.

6. Plaintiff received through the U.S. Mail a dunning letter dated 20 January 2011 from FRS seeking to collect \$2,402.23 for an alleged debt owed to Dell for personal, family, or household purposes.

7. Plaintiff has had a Dell Preferred Account in the past, number ending in 489, but the last activity on it was in 2004.

8. NCGS § 1-52(1) fixes the limitations period for commencing actions on contracts, including consumer finance agreements, at three years, which begins to run from the date of last activity.

9. Nothing in the dunning letter disclosed that the alleged debt was time-barred and that any payment would have restarted the limitations period, and also would have been an admission to the debt.

10. This violated 15 U.S.C. § 1692e(2)(A) and (10) and NCGS § 58-70-110(4) and -115(1) as to FRS, and NCGS § 75-54(4) and -55(1) as to Dell.

11. Because of Defendants' illegal collection activities, Plaintiff sustained actual damages, including at least \$100 paid to undersigned counsel to advise her on how to deal with Defendants and to stop their illegal collection activities.

12. **COUNT I: VIOLATION OF NCCAA AND NCDCA**--The facts as pleaded above show that Plaintiff is entitled to actual damages plus full statutory damages from Defendant Financial Recovery Services, Inc. per NCGS § 58-70-130 and from Defendant Dell Financial Services L.L.C. per NCGS § 75-56, together with the costs of the action and a reasonable attorney's fee per NCGS § 75-16.1.

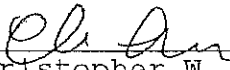
13. **COUNT II: VIOLATION OF FDCPA**--The facts as pleaded above show that Plaintiff is entitled to actual damages plus full statutory damages, together with the costs of the action and a reasonable attorney's fee per 15 U.S.C. § 1692k(a) from Defendant Financial Recovery Services, Inc.

WHEREFORE, Plaintiff prays that this Court enter judgment

in her favor for damages such as may be proved at trial, and a reasonable attorney's fee, expenses, and court costs, and such other and further relief as this Court thinks just and lawful.

TRIAL BY JURY IS HEREBY DEMANDED OF ALL ISSUES SO TRIABLE.

Respectfully submitted,



Christopher W. Livingston Esq., NC Bar No. 27282
Counsel for Plaintiff
PO Box 220, White Oak NC 28399
Phone and fax 910 866 4948, cell 910 876 7001
Email chrisatty@hotmail.com, usriflecaliber30m1@yahoo.com

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
C.A. No.**

TIFFANY D. SPENCER,

Plaintiff,

v.

CERTIFICATE OF SERVICE

FINANCIAL RECOVERY SERVICES, INC.,
a Minnesota Corp., and DELL FINANCIAL
SERVICES L.L.C., a Delaware LLC,

Defendants.

It is hereby certified that the foregoing Notice of Removal was served this day by CM/ECF and by placing copies of the same in a depository under the exclusive care and custody of the United States Postal Service in a first class, postage prepaid envelope and properly addressed as follows:

Christopher W. Livingston
P.O. Box 220
White Oak, NC 28399
Counsel for the Plaintiff

This the 16th day of June, 2011.

/s/ Caren D. Enloe
Caren D. Enloe
of Morris Manning & Martin, LLP
North Carolina Bar No. 17394
1000 Park Forty Plaza
Suite 350
Durham NC 27713
Telephone: (919)806-2969
Facsimile: (919)806-2969
cenloe@mmmlaw.com